

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SIDNEY NAIMAN,
Plaintiff,

v.

MERCHANTS BANCARD NETWORK,
INC.,
Defendant.

Case No. 20-cv-03527-EMC

**ORDER RE SUPPLEMENTAL
BRIEFING**

Docket No. 42

The parties have filed a stipulation of dismissal in this putative class action. No class has been certified in the case. Under the stipulation, Plaintiff will dismiss his individual claims with prejudice and the claims of the putative class without prejudice.

Federal Rule of Civil Procedure Rule 23(e) requires the Court to review and approve a proposed voluntary dismissal, settlement, or other compromise of a certified class's claims. The Ninth Circuit has held that Rule 23(e) also applies to settlements before certification, but in a much lighter form that does not entail "the kind of substantive oversight required when reviewing a settlement binding upon the class." *Diaz v. Trust Territory of Pac. Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989). Although there has been "some uncertainty" about whether this holding applies in the wake of the 2003 amendments to Rule 23(e), courts in this district continue to follow *Diaz* to evaluate the proposed settlement and dismissal of putative class claims.

Scott v. Comcast Cable Communs. Mgmt., LLC, No. 16-cv-06869-EMC, 2018 U.S. Dist. LEXIS 6914, at *1-2 (N.D. Cal. Jan. 16, 2018).


The Court orders the parties to file supplemental briefing and/or evidence regarding the *Diaz* factors. The supplemental briefing shall include a description of all publicity concerning this case and its filing. A joint supplemental brief is strongly preferred. If the parties take divergent

positions on any particular factor, they may so note and then each state its respective position.

The supplemental brief and/or evidence shall be filed within a week of the date of this order.

IT IS SO ORDERED.

Dated: September 6, 2023



EDWARD M. CHEN
United States District Judge

United States District Court
Northern District of California